

EXHIBIT 8

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6 Menlo Park, CA 94025
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7 Facsimile: 650-614-7401

8 Attorneys for Plaintiff
FACEBOOK, INC.

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 FACEBOOK, INC.,

14 Plaintiff,

15 v.

16 POWER VENTURES, INC. a Cayman Island
17 Corporation; STEVE VACHANI, an
individual; DOE 1, d/b/a POWER.COM,
18 DOES 2-25, inclusive,

19 Defendants.

Case No. 5:08-cv-05780 JW

**DECLARATION OF JOSEPH
CUTLER IN SUPPORT OF
FACEBOOK, INC.'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
FOR LIABILITY UNDER THE CAN-
SPAM ACT**

Date: December 19, 2011
Time: 9:00 a.m.
Judge: Hon. James Ware
Courtroom: 9, 19th Floor

20 CONFIDENTIAL – FILED UNDER SEAL
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1 I, Joseph Cutler, declare as follows:

2 1. I make this declaration in support of Facebook, Inc.'s Motion for Partial Summary
3 Judgment For Liability Under the CAN-SPAM Act. I have personal knowledge of the matters
4 stated herein, and if called as a witness could and would testify competently thereto.

5 2. I am an associate at the Seattle, Washington office of the law firm Perkins Coie
6 LLP. I am a member of the firm's litigation group. In that role, I have in the past been engaged
7 by the Plaintiff in this case, Facebook, Inc, ("Facebook"), to help it take legal action against
8 illegal spamming, phishing, and other forms of malicious Internet behavior.

9 3. [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 4. [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 5. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 6. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 7. Following my sending the cease and desist letter, I was contacted by Power
24 Ventures' CEO, Steve Vachani. Mr. Vachani said he was the owner of Power Ventures, that he
25 operated the Power website, and that he had the ability to continue or cease Power's activities.

26 8. In December 2008 through early 2009, I had numerous discussions with Mr.
27 Vachani about the functionality of the Power website. Through our discussions and additional
28 investigation, I learned of numerous other activities by Defendants, and I also asked that those

1 activities stop. In nearly all of our discussions, I continued to demand that Defendants cease their
2 unlawful activities. Our discussions occurred via email as well as on the telephone.

3 9. During our discussions, Mr. Vachani repeatedly assured me that the functionality
4 of the Power website would be changed to comply with Facebook's requests and that the Power
5 website's connection to Facebook would use Facebook's authorized "Facebook Connect" service.
6 Despite his repeated assurances, Mr. Vachani failed to make the changes to the Power website
7 that he had committed to make. One example is described below.

8 10. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

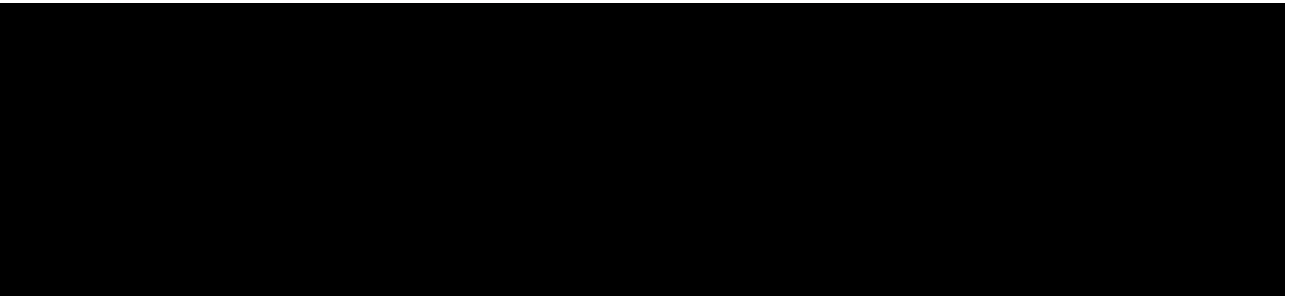
15 11. On December 15, 2008, I sent an email to Mr. Vachani responding to his
16 December 12, 2008 email. In that message, I reconfirmed that Facebook expected the Power
17 website to delete all user data and to fully comply with the Facebook Connect policies and all
18 other applicable Facebook Terms of Use and guidelines within two weeks, or by December 26,
19 2008.

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 13. On December 27, 2008, I received an email from Mr. Vachani informing me that
26 he and Power Ventures would not honor his earlier promises to me. Instead, the email notified
27 Facebook that the Power website would not remove any Facebook content, would not use the
28 authorized Facebook Connect implementation, and would not discontinue its spam campaign

1 aimed at soliciting Facebook users to join the Power Website. A true and correct copy of the
2 email I received from Mr. Vachani informing me of this decision is attached hereto as **Exhibit B**.

3 14. Left with no recourse, Facebook filed the present suit on December 30, 2008. I
4 prepared a chronology of the events that led to this action, including an accurate characterization
5 of my discussions with Mr. Vachani, which is attached hereto as **Exhibit C**. After Facebook filed
6 suit, it continued its attempts to reach an agreement with the owners of the Power website to stop
7 its violations of the company's Terms of Use. Those efforts are also reflected in the attached
8 chronology.



14 I declare under the penalty of perjury under the laws of the United States of America that
15 the foregoing is true and correct. This Declaration is executed on this 14th day of November,
16 2011, at Seattle, Washington.

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Joseph Cutler

EXHIBIT A



1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
PHONE: 206.359.8000
FAX: 206.359.9000
www.perkinscoie.com

December 1, 2008

SENT VIA EMAIL

Power Assist, Inc.
Attn: Leigh Power
210 Kineth Point Place
Coupeville, Washington 98239-9569

hostmaster1@poweremail.org

Re: Cease and Desist Soliciting Login Credentials and Scraping Facebook Content

Dear Ms. Power:

We represent Facebook Inc., based in Palo Alto, California. It has come to Facebook's attention that your company is soliciting and storing Facebook user login information, scraping content from Facebook, and sending unsolicited commercial messages to Facebook users through your website: <http://www.power.com>. These activities violated Facebook's Terms of Use, which specifically prohibit:

- Solicitation of Facebook user login information;
- Using or attempting to use another person's Facebook account without authorization from the Company;
- Use of automated scripts to collect information from, or otherwise interact with, the Facebook website;
- Uploading, posting, transmitting, sharing or otherwise making available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- Using the Facebook service or site for commercial purposes, except under formal advertising programs offered by Facebook; and

LEGAL14988339.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MENLO PARK
OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

Power.com
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- Incorporating any Facebook site content or information in any other database or compilation.

See <http://www.facebook.com/terms.php>.

In addition to breaching Facebook's Terms of Use, your website's functionality may violate the California Comprehensive Computer Data Access and Fraud Act, CA Penal Code § 502(c); the California Anti-Phishing Act of 2005, CA Bus. and Prof. Code § 22948, *et. seq.*; the Computer Fraud and Abuse Act, 18 U.S.C. § 1030; the CAN-SPAM Act, 15 U.S.C. § 7701 *et seq.*; and state laws prohibiting interference with Facebook's business expectations and interests.

You are also displaying the Facebook trademark on your website without Facebook's authorization, which likely causes visitors to your website to incorrectly believe that your website is approved by or in some way affiliated with Facebook.

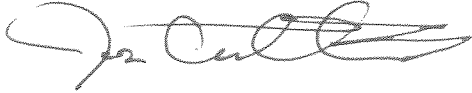
Facebook takes the protection of its users' privacy very seriously and is committed to keeping Facebook a safe place for users to interact and share information. Facebook has developed Terms of Use to protect its users and to facilitate these goals. As set forth above, your website violates Facebook's Terms of Use.

Facebook offers an open development platform that allows third parties to develop applications that integrate with Facebook, subject to Facebook's Developer Terms of Service. See <http://developers.facebook.com/terms.php> and <http://developers.facebook.com/guidelines.php>. You may also wish to familiarize yourself with "Facebook Connect," which allows Facebook users to connect their Facebook identity, friends and privacy to any site. For more information on Facebook Connect, please visit <http://developers.facebook.com>. These resources may allow you to integrate existing functionality with Facebook in an authorized manner.

Please respond to me in writing no later than close of business on Wednesday, December 3, 2008, confirming that you: (1) have ceased and desisted in, and will refrain from, soliciting, using and/or retaining Facebook user login information, or any other Facebook Site Content as defined by the Facebook Terms of Use, (2) ceased and desisted in, and will refrain from, sending any manner of unsolicited commercial messages to Facebook users; (3) removed compatibility with Facebook from your website, (4) removed references to Facebook from your website and other promotional material, (5) ceased using and or displaying Facebook's trademark on your website and/or other promotional material, and (6) that in the future you and your company will strictly comply with Facebook's Terms of Use.

Power.com
December 1, 2008
Page 3

Very truly yours,

A handwritten signature in dark ink, appearing to read "Joe Cutler", with a stylized, sweeping flourish at the end.

Joseph P. Cutler

JPC:jpc

EXHIBIT B

Dalton, Amy

From: steve@stevevachani.com
Sent: Friday, December 26, 2008 9:50 PM
To: felipe.herrera@powerinc.net; Cutler, Joseph P. (Perkins Coie)
Cc: Demetrescu, Nicole (Perkins Coie); McCullagh, James R. (Perkins Coie); steve@power.com
Subject: Power.com Update - sent December 26th, 2008

Dear Joseph,

I am writing to follow up to our discussions regarding Power.com's integration of Facebook connect, your requests for us to take down our current Power browser compatability with Facebook, and your complaints regarding our users storing their Facebook login information inside the Power Browser. I hope you will pass this letter on to Sam and other appropriate parties inside of Facebook to communicate our sincere desire to diplomatically resolve our current disagreement and help you reduce these disagreements with well intentioned companies like Power.

Power.com is very committed to working with Facebook and we sincerely hope that this message of diplomacy and good intention is very clear in this letter. We would like to reiterate that we have made the decision to make every diplomatic effort possible to cooperate with Facebook to integrate your Facebook Connect solution on our login page. We had originally expected that it would take us 2 weeks to complete this integration, but with the holidays and the amount of work necessary to complete this integration, we realistically don't expect have this new solution fully integrated until January 30th as we had previously discussed. After careful consideration and after previously thinking that it would better to take Facebook comptability down while we implemented this new solution, we have made the business decision to not prevent the interruption of service to our millions of users while working closely to make these changes to address Facebook's concerns. We sincerely hope that while this is not your desired action, you will respect our reasons for doing this and keep the door open and approve Power.com inside of Facebook connect when we go live in one month. Furthermore, we would like to work with Facebook to offer our complete browser tools to users with Facebook's consent and input into the user experience.

The Power.com browser provides our users value added features across their Internet experience. Like most browsers, we have little interest to cause harm to Facebook or reduce Facebook's revenues. On the contrary, we are taking proactive steps to pass all Facebook ads through to the user inside our browser. Similar to Firefox, Internet Explorer, Flock, and other browsers and browser add-ons, we provide our users a browser to navigate and continue to use their existing sites and do not in any way attempt to obstruct users from using the sites they are accustomed to using every day. Like most browsers, we do offer our users the option to either start their experience on our home page or start on their default social network.

Furthermore, we are about to launch a new solution which will pass Facebook ads inside of all Facebook content which is displayed outside of Facebook. This is something we can have ready by the end of January and which we can also enable for you to offer to other development partners whose only desire is to create positive applications for Facebook users. We are committed to working with the entire industry to responsibly create a borderless web where all parties interests are respected when widgets, apps, messages, and other content are distributed outside of Facebook or outside the host site of any other web publisher.

Power strives for complete transparency with our users by providing them explicit statements on our front page in two different places about the nature of our application, the fact that we are a value added browser with no endorsement by other sites, and we also require a user before using our service to read

through and proactively accept our terms and conditions where we for the third time clarify the users consent and understanding that we are in no way affiliated with or endorsed by Facebook.

We completely understand Facebook's position to not begin any business discussions with Power.com until we have become compliant with Facebook requests. We request that you please reconsider this decision and enable us to meet with Facebook as early as possible to diplomatically resolve this issue in a way that will allow us to keep creating new applications for Facebook and also help Facebook better accommodate other innovators and application developers like Power.com who only want to enrich your user's experiences. We are working to implement this complete solution with Facebook's cooperation by January 30th and sincerely hope that you will not misinterpret this delay and our decision to not interrupt the user experience of our mutual users as our lack of desire to work together with Facebook.

If you maintain that you cannot facilitate a direct meeting, we will happily use our own contacts to start these discussions with Facebook, but it is difficult to start these discussions until after the holidays are over. We have no problem using our own contacts to get to the appropriate people at Facebook engaged in discussions in January to resolve this, but naturally prefer your assistance to speed things up.

We believe that it would be a serious strategic mistake to disrupt the experience of the millions of Power.com users while we are actively working to complete the integration of Facebook connect. We believe that this would create unnecessary attention and disruption among users, the media, and the industry around what we believe is a discussion that can be handled maturely and quietly between our companies.

I believe that Facebook understands the current challenges as Meebo and soon thousands of other sites that will connect to Facebook using open source technology solutions and other user driven solutions that are not endorsed by Facebook. We respect Facebook's objectives to create an open Internet which respects and protects users and enables developers to create new innovations to serve Facebook users. We think that it is important that we all diplomatically work together to achieve these goals for the best interests of users. The borderless web is inevitable and we all need to work together to define the best practices for this new and exciting Internet which Facebook has already played such a pivotal role in helping create over the past years.

Power.com is very interested in sitting down with Facebook to discuss together the future of the borderless internet and work to address all of Facebook's concerns. I am willing to fly to San Francisco as early as possible to proactively present our solutions or we are happy to wait until after January 30th when we complete our integration of Facebook connect on our initial login page.

We believe that that your number one concern of protecting a users username and password will be resolved by our implementation of Facebook connect or by Facebook using an extension to Facebook connect that we would like to present to you which would allow Power and other outside developers maximum flexibility to innovate on top of Facebook while keeping the users username and password locked securely and safely outside the reach of Power.com or any other developer. We are currently supporting and helping introduce a new industry wide solution that will ensure that sites like Power.com, Meebo, eBuddy, and thousands of others will never have access or store Facebook usernames and passwords, but still have the maximum flexibility to innovate new applications on top of Facebook and all other sites on the Internet. We all share similar investors and partners and we are all striving for the same objectives.

We believe that Facebook's second concern is the potential loss of revenues when Facebook content is accessed outside of Facebook. This coming month, Power.com will be introducing a solution which will pass all Facebook advertising through with your content that is displayed outside of Facebook. We are proceeding with this without being asked in order to further demonstrate our desire to diplomatically and responsibly address the issues of distributed content inside of mashed up websites. Power.com has no interest to

interfere or to prevent Facebook from receiving revenue from all its content and will go out of its way to showcase to the industry how to responsibly solve this problem. We would welcome the opportunity to work with you to define these standards together with the leading sites on the web and introduce these standards together to the industry and inside of Facebook connect.

Finally, as a browser, most of our users experience is actually inside of Facebook and other destination sites and we do not in any way prevent users from viewing the entire Facebook experience with all ads and revenues streams intact.

While we understand your current requests to take down the current Facebook compatibility with the Power Browser today, we strongly believe that it is a mistake to disrupt the user experience of our millions of users and create attention around our private discussions.

Unlike some other sites that you are dealing with that may truly be causing harm to Facebook, Power.com's only goal is to enable new applications which enhance Facebook's users experience inside your site.

Therefore, we diplomatically request that you please grant us an extension until January 30th to work to achieve compliance with Facebook's request and to have time to diplomatically sit down with Facebook to present solutions that will assist you in dealing with these core issues not only with Power.com, but with the hundreds of other well intentioned developers who are only looking to create new innovations for Facebook, but who do not yet have the flexibility from Facebook to support their innovations. The floodgates are about to open and we would love to work proactively to solve these challenges together.

We sincerely hope you respect our decision on this and look forward to building a healthy and diplomatic dialogue with Facebook to address your true concerns of protecting your users. And we apologize for the lack of clarity on our position until today and for any confusion we may have created from this lack of clarity. Facebook's initial strong reaction did catch us off guard and after careful consideration, we have crafted this letter to make clear our position and desire and commitment to work together.

Best Regards,

Steve Vachani

CEO, Power.com

--- On **Tue, 12/16/08**, Cutler, Joseph P. (Perkins Coie) <JCutler@perkinscoie.com> wrote:

From: Cutler, Joseph P. (Perkins Coie) <JCutler@perkinscoie.com>

Subject: RE: Power.com

To: steve@stevevachani.com, felipe.herrera@powerinc.net

Cc: "Demetrescu, Nicole (Perkins Coie)" <NDemetrescu@perkinscoie.com>, "McCullagh, James R. (Perkins Coie)" <JMcCullagh@perkinscoie.com>

Date: Tuesday, December 16, 2008, 10:41 AM

Steve,

I imagine you are in the air right now, but upon landing – could you confirm whether you are still available

at 12:00 Pacific Time? My schedule moved a bit today – and I now have either 12-12:30 or after 2:00 available. I'd like to talk at noon as you originally proposed. Will that work?

If I haven't heard from you then, I'll call you at noon.

Thanks,

Joe

From: steve@stevevachani.com [mailto:steve@stevevachani.com]
Sent: Monday, December 15, 2008 6:05 PM
To: Cutler, Joseph P. (Perkins Coie); filipe.herrera@powerinc.net
Cc: Demetrescu, Nicole (Perkins Coie); McCullagh, James R. (Perkins Coie)
Subject: Re: Power.com

I will be free to go over these terms tomorrow. I am on a flight all morning, but should be free to talk around noon.

Thanks,
Steve

Thanks,
Steve

Sent via BlackBerry by AT&T

From: "Cutler, Joseph P. (Perkins Coie)"
Date: Mon, 15 Dec 2008 17:00:53 -0800
To: <steve@stevevachani.com>; <filipe.herrera@powerinc.net>
Subject: RE: Power.com

Steve and Felipe,

I am sorry that we were not able to match schedules on Friday. Facebook has reviewed this letter, and is willing to accept your offer to have Facebook Connect implemented by EOD December 26 – which is two weeks from the date you sent the letter.

Meanwhile, as you may know, Facebook has taken technical measures to limit the interaction between Power.com and its network at this time. In order to fully initialize your integrated Facebook Connect status, and to lift those technical measures, Facebook requires written confirmation of the following:

1. That Power.com has purged and destroyed all data that it obtained from the Facebook network or from Facebook users prior to implementation of Facebook Connect, including all login information and/or any other data obtained or scraped from Facebook's site.
2. That Power.com has ceased displaying Facebook's trademarks on its website, except as expressly permitted by Facebook's Terms of Use, Developer Terms of Service, and/or Facebook's Connect Policies (see http://wiki.developers.facebook.com/index.php/Facebook_Connect_Policies).
3. That Power.com has implemented Facebook Connect in strict adherence to Facebook's Terms of Use, Developer Terms of Service, and/or Connect Policies.
4. That Power.com has removed all compatibility with Facebook's site that does not comply with Facebook's Terms of Use, Developer Terms of Service and/or Connect Policies.
5. That Power.com will in the future adhere to all of Facebook's Terms of Use, Developer Terms of Service, Connect Policies.

While Facebook does not object to Power.com's efforts to interact with Facebook's developer teams via normal channels, it will not set up any special developer meetings for Power.com.

Lastly, regarding your proposed notice to Facebook users: your Connect interaction must strictly comply with Facebook's applicable Terms and Policies. Posting a notice that casts Facebook's Connect system in a negative light will likely become counterproductive to your stated goals of working together with Facebook's developers. Facebook reserves its right to deny approval for any Facebook Connect application for any reason.

I would still like to go over these items together on the phone. Are you available for a call tomorrow (Tuesday)? If so, what time?

Please confirm that you agree with these terms, and that you will commit to integrating Facebook Connect by EOD, December 26, 2008. Please also confirm that you intend to provide the written confirmation as described above by that time.

Thanks,

Joe

From: steve@stevevachani.com [mailto:steve@stevevachani.com]
Sent: Friday, December 12, 2008 1:24 PM
To: Cutler, Joseph P. (Perkins Coie)
Cc: felipe.herrera@corp.power.com; Eric Santos
Subject: Power.com

Thank you for patience to allow us to clarify our plan of action on Power in regards to our discussion on Wednesday.

We decided to move forward with the following steps

1) We will implement Facebook connect on our main login page and work with the capabilities of Facebook connect for the login to our site. Instead of a login for Facebook, users will have a button which then opens the Facebook connect window and allows them to login through Facebook connect. We will say that Facebook connects current capabilities are extremely limited and we would love the opportunity to provide a Facebook connect extension to Facebook that would allow us to enrich the experience for Facebook users. We will show that to the bus dev guys when we have a chance to meet with them.

2) We will delete any Facebook friend information we currently have.

3) We will move forward and use the Facebook features to utilize Facebook's IM, updates, and some other functionality that is already available. After we finish the implementation, we would like the opportunity to get Facebook's feedback. We have some simple innovative ideas that will follow Facebook connects system, but allow for better usability and integration. As stated earlier, we do believe that the user experience of Facebook connect is extremely limited at this stage and we hope to have an open and friendly relationship with the Facebook team to share ideas and complete solutions to allowing partners to do greater integration while addressing Facebook's concerns.

4) We are finishing a solution that we have already been discussing with other sites that is an extension to Facebook connect that Facebook could enable that will allow us to provide more functionality to Facebook users while protecting all the concerns of Facebook.

5) We do understand that there is no guarantee that Facebook will accept this solution, but our only request is

that

6) We estimate that it will take us 2 weeks to completely finish this integration with Facebook connect and shift the user experience for our current users.

7) While have made the decision today to do this, we would request only one thing. We would like to meet with the business dev and guys involved on the product for thinking about solution for providing more flexibility with partners and at least present our simple code that Facebook could add that would allow us to provide a richer experience to our users and at the same time do it in a way that Facebook finds compatible with you they are envisioning their partners working with them in the future.

I believed that this email addresses everything we discussed.

The two requests we have and hope you will facilitate.

1) Can we get an email introduction to the correct people inside Facebook. We only ask for the introduction and we will follow up and see their interest to meet.

2) Provide us 2 (instead of one you offered) to implement this new solution.

We did study Digsby and others and saw the changes they made in their UI to implement Facebook connect.

Please call me now and we can discuss this further. I am heading to a flight shortly.

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

EXHIBIT C

Power.com Chronology

Date	Event
December 1, 2008	Facebook counsel sends Power.com a letter advising them that their service breaches several of Facebook's Terms of Use, including provisions against scraping, unauthorized messaging, improper use of Facebook's trademark, unauthorized access of Facebook user accounts, unauthorized solicitation and storage of user login information, and improper use of the Facebook service for commercial use. The letter demands that Power.com respond by December 3, 2008 to confirm its intent to comply with Facebook's demands.
December 3, 2008	No response from Power.com
December 4, 2008	Counsel for Facebook contacts the domain registrant for "Power.com," (Mr. Powers, a Washington State resident), who professes no involvement in the website, but who provides contact information for "Steve Vachani" and "Filipe Herrera" and indicates that they are responsible for running the website. "Mr. Powers" states that he forwarded Facebook's original cease and desist letter on the day he received it (December 1, 2008) to both Vachani and Herrera.
December 4, 2008	Counsel for Facebook sends an email to Steve Vachani and Filipe Herrera explaining that the deadline for response has past, and requests a response from them by December 5, 2008.
December 4, 2008	Steve Vachani responds in an email requesting a meeting with Facebook to "sit down with appropriate members and discuss a solution." Mr. Vachani indicates that he is in San Francisco, and would be willing to meet the following week. He does not signal any intention to comply with Facebook's demands to stop violating its Terms of Use.
December 5, 2008	Vachani calls counsel for Facebook and requests a meeting with Facebook developers to discuss a potential business relationship. Counsel responds that Facebook receives hundreds of such requests each month, and does not have resources to personally tailor its platform to all would-be developers. Counsel reiterates Facebook's position that Power.com needs to comply with its Terms of Use just like any other entity accessing the Facebook network. Counsel repeats Facebook's demand to comply with Facebook's Terms of Use immediately.
December 10, 2008	<p>Vachani calls counsel for Facebook and renews his request to forge a business partnership with Facebook to seek a "common solution" to Facebook's concerns. Counsel repeats Facebook's position: that it is not in a position to give developers preferential treatment; that it expects Power.com to comply with its Terms of Use before requesting any further business interaction; and repeats that it offers "Facebook Connect" as a means to accomplish most, if not all, of what Power.com seeks to do.</p> <p>Vachani responds that his people are "working on it," and agrees to provide written confirmation by 12:00 PM on Friday, December 12, 2008 that they have removed compatibility with Facebook's website, that they have removed Facebook's trademarks, that they have purged data obtained from Facebook users while the site was interacting with Facebook.com, and that they will abide by Facebook's Terms of Use in the future.</p>

Power.com Chronology

December 12, 2008	<p>Power.com fails to adhere to its agreement to remove functionality between Power.com and Facebook.com by this date.</p> <p>Instead, Vachani sends an email to counsel for Facebook signaling Power.com's agreement to implement Facebook Connect, but threatens to include a statement on the website that "Facebook Connect's current capabilities are extremely limited and we would love the opportunity to provide a Facebook connect extension to Facebook that would allow us to enrich the experience for Facebook users."</p> <p>Vachani agrees to delete all user data.</p> <p>Vachani states that Power.com is finalizing a solution that it has implemented with other service providers that would "enable us to provide more functionality to Facebook users" and requests a meeting with Facebook to promote that solution. Vachani reiterates that Power.com desires a working and friendly relationship with Facebook.</p> <p>Vachani estimates that implementation of Facebook Connect will take 2 weeks to complete.</p>
December 12, 2008	<div style="background-color: black; width: 100%; height: 40px;"></div>
December 15, 2008	<p>Counsel for Facebook responds to Vachani and accepts the proposed 2-week extension on Facebook Connect implementation, and demands that Power.com remove any non-compliant configurations of Power.com, delete all Facebook data obtained using this non-compliant configuration, conform any postings of Facebook trademarks to established Facebook guidelines, and follow Facebook's Terms of Use and applicable Connect policies in the future.</p> <p>The 2-week extension results in a new deadline of EOD December 26, 2008 for Power.com compliance with Facebook's Terms of Use and applicable Connect policies.</p>
December 15, 2008	Vachani acknowledges receipt of Facebook's agreement to the December 26 deadline.
December 17, 2008	<p>Vachani sends counsel for Facebook a message indicating that Power.com has commenced implementation of Facebook Connect, but expresses concern that he was "too optimistic" about his plan to implement Connect by December 26, 2008.</p> <p>Vachani proposes a meeting with Facebook to present the Power.com "product plan" and pitch their "improved" integration functions that they would like to use with Connect.</p>
December 22, 2008	Counsel for Facebook contacts Vachani regarding his latest email and reiterates Facebook's position that developers do not receive preferential treatment – especially when they approach Facebook in breach of Facebook's

Power.com Chronology

	<p>Terms of Use.</p> <p>Counsel for Facebook reiterates its demand that unauthorized interactions between Power.com and Facebook.com cease by December 26, 2008.</p> <p>Counsel repeats Facebook's position that Power.com should respect Facebook's Terms of Use during the time it develops Facebook Connect, that granting an extension to Power.com is not permission to continue violating Facebook Term of Use, and that Power.com may take as much time as needed to implement Facebook Connect, but that Facebook expects Power.com to cease its unauthorized access to Facebook.com in the meantime.</p>
December 22, 2008	Facebook discovers that Power.com has purposely circumvented its IP blocking measures to continue its unauthorized access to Facebook by using a shared IP address owned by Amazon.com.
December 26, 2008	<p>At 10:00 PM on the deadline for compliance, Vachani sends counsel for Facebook an "update" email stating that Power.com will not be able to finalize its Facebook Connect integration until January 30, 2009.</p> <p>Vachani's email states: "after previously thinking that it would better to take Facebook compatibility down while we implemented this new solution, we have made the business decision to not prevent the interruption of service to our millions of users while working closely to make these changes to address Facebook's concerns."</p>
December 30, 2008	Facebook files a complaint in the Northern District of California against Power.com.
December 30, 2008	<p>Counsel for Facebook sends an electronic copy of the complaint to Vachani with an email indicating that Power.com's unilateral decision to continue breaching Facebook's Terms of Use while it implements Facebook Connect is unacceptable, and has left Facebook no choice but to file suit against Power.com in order to stop its continued unauthorized access to Facebook's site.</p> <p>Facebook demands that Power.com take down its compatibility with Facebook's site by December 31, 2008 or Facebook will be forced to pursue a Temporary Restraining Order against Power.com.</p>
December 31, 2008	Vachani responds that it will take a week to take down such compatibility, and promises to have the integration removed by Monday, January 5, 2009.
December 31, 2008	Counsel for Facebook responds to Vachani, rejects his offer to remove compatibility by January 5, and reiterates Facebook's intention to seek a Temporary Restraining Order if the compatibility is not removed by 5:00 PM.
December 31, 2008	Power.com removes compatibility with Facebook and sends a message to counsel for Facebook requesting that Facebook withdraw the lawsuit.
January 5, 2009	Facebook communicates its willingness to settle the lawsuit against Power.com in return for the following: (a) a signed stipulated permanent injunction requiring Power.com to comply with Facebook's Terms of Use in

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	the future; and (b) payment of [REDACTED] to Facebook to recoup the costs of having to litigate, rather than negotiate, to obtain compliance with its terms.
January 5, 2009	[REDACTED]
January 5, 2009	In a telephone conference with Facebook counsel, Vachani agrees to respond to Facebook's settlement offer by January 9, 2009.
January 7, 2009	Vachani responds stating that he wants to resolve the lawsuit quickly, and that his technical staff will look into the rogue IP logs; and promises prompt contact by Power.com or its counsel.
January 7, 2009	Counsel for Facebook responds to Vachani asking for the contact information for Power.com's counsel. Vachani responds in an email stating that Power.com is actively seeking, but has not retained, counsel.
January 7, 2009	Vachani indicates that it has "frozen" all active sessions to eliminate any residual "rogue" login sessions.
January 8, 2009	Vachani sends an email to counsel for Facebook stating that they are still seeking counsel.
January 9, 2009	Power.com fails to respond to Facebook's settlement offer as promised.
January 12, 2009	Vachani sends an email to counsel for Facebook stating that he is overseas dealing with "emergencies," and he will be back to the United States on January 17, 2009.
January 12, 2009	Facebook receives a letter from Power Ventures, Inc., a California corporation, stating that it has no relationship with Power.com. Despite the fact that Power.com is run by "Power Ventures, Inc.," it is not registered to do business in California, as Facebook thought. Facebook contacts the owner of the California entity and agrees to dismiss it when it resolves matters with Power.com. The owner of the California entity indicates that the corporation is inactive at this time, and that such a delay would be acceptable. Counsel for Facebook begins searching for true location/identity of Power.com corporate ownership.
January 13, 2009	Vachani states that Power Ventures, Inc. is a Cayman Island entity, but offers not details regarding how to contact or serve that entity.
January 13, 2009	Facebook submits an inquiry to the Cayman Island Government requesting the service address for Power Ventures, Inc.
January 13, 2009	Facebook files First Amended Complaint to add new defendant names to properly name suspected defendant entities.
January 15, 2009	Facebook sends a copy of the First Amended Complaint to Vachani, reiterates its willingness to settle the case by the terms described in its January 5 email, but warns that the amount for which Facebook is willing to settle is tied to the amount Facebook expends resolving the dispute. Continued delay will increase the settlement costs.
January 16, 2009	Counsel for Facebook receives contact information for Power Ventures, Inc. from the Cayman Islands – but no telephone number or personal contact for a registered agent.

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January 16, 2009	Washington Post article announcing that MySpace has also blocked Power.com. http://www.washingtonpost.com/wp-dyn/content/article/2009/01/16/AR2009011603494.html
January 21, 2009	Counsel for Facebook discovers that Vachani has only provided hotel and bogus address information for all domain registrations. He does not appear to have a valid address at which Facebook can effect service of process.
January 22, 2009	Vachani sends an email to counsel for Facebook indicating that Power.com is close to finalizing its choice of counsel, and has been advised to stop communicating personally with Facebook counsel. Vachani signals his continued willingness to resolve the case.
January 23, 2009	Counsel for Facebook sends service package to Power Ventures, Inc. in the Cayman Islands in order to effect service of process under the Hague Convention.
February 5, 2009	Facebook discovers that Power.com has implemented Facebook Connect without resolving the lawsuit, and the implementation does not properly follow the rules regarding Facebook Connect implementation. [REDACTED] counsel for Facebook communicates to Power.com that Facebook is willing to permit Power.com to resume access to its network through Facebook Connect only after the lawsuit is resolved.
February 11, 2009	Service of Process effected on Power Ventures, Inc. in the Cayman Islands.
February 17, 2009	Vachani sends an email to counsel for Facebook indicating that it has no updates on finding counsel.
February 24, 2009	Counsel for Facebook advises Vachani that Facebook intends to file a notice of default with the Court on March 2, 2009.
February 28, 2009	Vachani sends an email to counsel for Facebook introducing Scott Bursor as Power's counsel in the matter.
March 2, 2009	Facebook agrees to allow Power.com an extension on the time to answer the complaint to March 23, 2009.
March 4, 2009	Facebook communicates its settlement offer to counsel for Power.com, which includes the same terms as the first settlement offer, and demands [REDACTED].
March 10, 2009	Power.com communicates its counteroffer for settlement to Facebook, which does not offer any money to Facebook, does not promise to follow Facebook's Terms of Use, and only offers a "good faith effort" to implement Facebook Connect according to Facebook's policies.
March 10, 2009	Facebook files notice of voluntary dismissal of Power Ventures, Inc., the California corporation.
March 14, 2009	In a telephone conference with counsel for Power.com, counsel for Facebook rejects Power.com's offer, explains that Facebook does not trust Mr. Vachani to abide by Facebook's Terms of Use without a permanent injunction in place, and that Facebook will not settle its case for less than what it spent enforcing its Terms of Use in the first place.

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	<p>Counsel for Facebook explains that Facebook views Power.com's unwillingness to sign a stipulated injunction or settle the lawsuit as evidence that Power.com cannot be trusted in the future, and that these negotiations endanger any hopes that Power.com may have of dealing as partners with Facebook in the future.</p> <p>Counsel for Facebook indicates that Facebook remains willing to work with Power.com in the future, so long as the lawsuit is resolved amicably.</p>
March 23, 2009	Power.com files Motion to dismiss for failure to plead with particularity.
April 17, 2009	Facebook files Opposition to Power's Motion to Dismiss
April 24, 2009	Power files Reply in Support of Motion to Dismiss
May 8, 2009	Court denies Power's Motion to Dismiss and advises Facebook to submit More Definitive Statement to clarify its Eighth Cause of Action.
June 10, 2009	Facebook files Definitive Statement regarding its Eighth Cause of Action.
July 9, 2009	Power.com files its Answer to Complaint which contains counterclaims alleging antitrust violations. The counterclaims are extremely bare, and the answers to the other substantive issues in the Complaint are similarly lacking.